application to this case, because the suit case which caused the injury was not under the control of the defendant. But we are not inclined to follow the suggestion contained in some of the New York cases; that the railroad company is bound to exercise only a reasonable degree of care in protecting its passengers from the risk of luggage falling from racks provided for its stowage. The furnishing of racks for that purpose invites passengers to use them to the extent of their apparent limit of safety, and imposes on the railroad, when the racks are so used, the duty of operating its trains so as not to endanger passengers sitting in the seats underneath such racks. If the defendant maintained racks of such construction that there was a risk not apparent to the ordinary passenger in putting one suit case on top of another, it should have given notice that it was dangerous to do so, either before the train started, or at some time during the hour and a half after the train started and before the accident happened. If any evidence had been offered from which the jury could reasonably have found that the rack in question could not safely hold two dress suit cases, one on top of the other, we think the jury would also have been justified in finding that the defendant was negligent in giving no warning of that fact, for it is clear that a passenger sitting in a seat provided for that purpose is not bound to maintain a lookout to protect himself against the danger of falling luggage, unless perhaps the danger is so obvious that it ought to attract the attention of any ordinary observant person. But the evidence as offered pointed the other way, and indicated that the suit case in question was securely stowed in the rack before the train started, and there was no evidence that it was in fact dislodged, or was liable to be dislodged, by the ordinary motion of the train. Under this condition of the testimony the jury might resonably have found that the proximate cause of the accident was the unusually abrupt train stop; and this, as already stated, is a cause peculiarly under the control of the defendant's servants." Rosenthal *v.* R. Co., 89 Atl. 888.

Peddling and Interstate Commerce.—When the judges of an appellate court are equally divided in opinion as to the disposition to be made of a case, the judgment of the court below will be affirmed. Such a judgment of affirmance is, of course, binding on the parties to the particular litigation; but the decision is not regarded as settling the question of law involved so that it may be cited or relied on as a precedent. An interesting illustration of this doctrine is found in J. G. Davis *v.* Commonwealth of Virginia, 35 Supreme Court Reporter, 479, the court in effect reversing itself on the proposition of law established in Roselle *v.* Commonwealth, 32 Supreme Court, 522. Roselle was convicted of peddling without a license. He maintained that the conviction if upheld would constitute an unlawful in-

terference with interstate commerce. The state Supreme Court in 65 S. E. 526, held adversely to his contention. By a divided court, the United States Supreme Court affirmed the judgment. The Davis Case, supra, was decided by the Virginia Supreme Court on the opinion and affirmance in the Roselle Case. However, Davis' appeal from the state courts met a better fate. The United States Supreme Court opinion reads: "The Empire Art Institute of New York sent soliciting agents to Virginia, who took orders on a blank furnished by the company. These blanks stated: 'We do not compel you to take frames from us, but, owing to the delicate nature of the work, all portraits are delivered in appropriate frames which this ticket entitles you to select at wholesale prices.' The agent put the pictures into appropriate frames, and then delivered the portraits, offering the customer a choice of three different styles of frames, the customer taking one or not, at his will. It often has been pointed out that commerce among the states is a practical, not a technical, conception. The preliminary contract bound the company to furnish a chance to take a frame with the portrait. The furnishing of the opportunity was a part of the interstate transaction. From the point of view of commerce the business was one affair."

Lightning Arresters in Elevators.—Plaintiff was injured while attempting to run an elevator during a storm. The elevator was not equipped with lightning arresters. In holding the employer liable, the court in Melcher *v.* Freehold Inv. Co., 174 Southwestern Reporter, 455, says: "A lightning arrester is a well-known device to users of electricity, used for the purpose of preventing excessive charges of static electricity from being conveyed over the wires into buildings where electrical apparatus is contained and used. It is well known that static electricity or lightning during a thunderstorm is likely to get on wires carrying manufactured electricity. Defendant contends that its machinery was in such shape that the direct current used for the purpose of operating the elevator could not escape. The evidence discloses that at the time plaintiff was shocked there was a thunderstorm in progress, and that there was much lightning and thunder. The further fact that there was a flash of lightning just as plaintiff put his hand on the controller, and the fact that a fuse was found 'blown out' on this elevator, is evidence from which it can reasonably be inferred that the shock received by the plaintiff was the lightning, and that it came in over the defendant's wires. Had a lightning arrester been placed on defendant's wires, it was fairly a question of fact for the jury, under the evidence, whether it would have tended to prevent the lightning which had gotten onto the wires from entering the building; and, as there was evidence to the effect that it would tend to divert the lightning from the building and from the place where plaintiff was working in